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TRANSCRIPT OF PROCEEDINGS  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DEC - 6 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

DOCKET NO. MM 94-47

IN THE MATTER OF:

BENCHMARK COMMUNICATIONS CORPORATION

For Construction Permit for a New  
FM Station On Channel 291C3 in  
Chatom, Alabama

DATE OF HEARING: October 18, 1994

VOLUME: 2

PLACE OF HEARING: Washington, D.C.

PAGES: 8 - 175

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In the matter of: )

BENCHMARK COMMUNICATIONS CORPORATION )

MM DOCKET 94-47 )

For Construction Permit for a New )  
FM Station On Channel 291C3 in )  
Chatom, Alabama )  
----- )

The above-entitled matter came on for hearing  
pursuant to Notice before Judge Edward Luton, Administrative  
Law Judge, at 2000 L Street, N.W., Washington, D.C., in  
Courtroom No. 1, on Wednesday, October 18, 1994 at 10:00 a.m.

APPEARANCES:

On behalf of Benchmark Communications Corporation:

JOHN RAYMOND MEYERS  
CLARENCE BRELSFORD  
4700 Southwest 75th Avenue  
Miami, Florida 33155  
(305) 264-5963

On behalf of the Mass Media Bureau:

JAMES SHOOK, Esquire  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554

I N D E X

Witness:	Direct	Cross	Redirect	Recross
John Raymond Meyers		7		

E X H I B I T S

<u>Joint</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
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Benchmark

No. 1	11	73
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Mass Media Bureau

Nos. 1 - 5	75	75
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Hearing Began: 10:00 a.m.      Hearing Ended: 4:00 p.m.

Lunch Break Began: 1:00 p.m.      Lunch Break Ended: 2:00 p.m.

P R O C E E D I N G S

JUDGE LUTON: -- please, starting on my left.

MR. MEYERS: My name is John Raymond Meyers. I'm the president and director of Benchmark Communications Corporation.

JUDGE LUTON: Thank you.

MR. SHOOK: And I'm James Shook. I represent the Chief, Mass Media Bureau.

JUDGE LUTON: All right. I have copies of the exhibits which the parties have exchanged so let's get started. We're going to begin first with Benchmark's direct case.

MR. MEYERS: Okay. Would you like the original?

JUDGE LUTON: No need.

MR. MEYERS: Okay, then I'd like to have that accepted at Exhibit 1 submitted into evidence.

JUDGE LUTON: Fine, the whole thing? There's some two volumes there?

MR. MEYERS: Yes, sir.

JUDGE LUTON: The entire thing?

MR. MEYERS: I beg your pardon?

JUDGE LUTON: The entire two volumes --

MR. MEYERS: The entire two volumes.

JUDGE LUTON: -- offered --

MR. MEYERS: Yes, sir.

1 JUDGE LUTON: -- as a package.

2 MR. MEYERS: Yes, sir.

3 (Whereupon, the document referred to  
4 as Benchmark Communications No. 1 was  
5 marked for identification.)

6 JUDGE LUTON: Any objection?

7 MR. SHOOK: Yes, sir, the Bureau has objections to  
8 certain portions, and I'm afraid it will be necessary to go  
9 through it essentially pages or page by page and attachment by  
10 attachment.

11 JUDGE LUTON: All right.

12 MR. SHOOK: Your Honor --

13 JUDGE LUTON: First, Mr. Meyers, I want to get in  
14 the right places a submission that you made sometime after  
15 October 3, which tells me that some documents were missing  
16 from what's presently being offered, and -- there are three  
17 documents, and these loose pages are intended to supplement  
18 the bound volumes. Can you tell me where they go?

19 MR. MEYERS: Yes, they -- they've -- the first two  
20 were the second page of forms that we had filed and, of  
21 course, when we ran them through the copying machine it didn't  
22 copy both sides.

23 JUDGE LUTON: Okay, no need to explain just tell me  
24 where they, where they go here, Attachment 13.

25 MR. MEYERS: I think it would be easier if I just

1 | came up there.

2 |           JUDGE LUTON: I don't think so -- well --

3 |           MR. MEYERS: Okay, it's the second page on  
4 | Attachment 13. In retrospect, I should have used colored  
5 | papers for the dividers, I think.

6 |           JUDGE LUTON: That would have helped.

7 |           MR. MEYERS: It would have been a lot easier for  
8 | everybody.

9 |           JUDGE LUTON: Way off.

10 |           MR. MEYERS: Here we go, getting close. It's back a  
11 | couple of pages there.

12 |           JUDGE LUTON: Okay. I think I can find these on my  
13 | own here.

14 |           MR. MEYERS: Okay.

15 |           JUDGE LUTON: Thirteen, twenty-one, and forty-four.  
16 | Well, let's make sure that they are placed in the right places  
17 | in the copies that are made available to the reporter. That  
18 | is, after they are introduced in evidence let's just make sure  
19 | they are correct, that's all. With respect to the Bureau's  
20 | objections, one of the objections, I take it, a lot of  
21 | material.

22 |           MR. SHOOK: Yes, sir. I noticed something about the  
23 | testimony that I was going to raise anyhow. It would cover a  
24 | fair amount of that material and I just wonder if it  
25 | duplicates -- it would duplicate what the Bureau might have in

1 mind. I'll hold off on that until we move along until we see  
2 what the nature of the Bureau's objections are. Mr. Shook,  
3 I'll permit you to proceed.

4 MR. SHOOK: Thank you, Your Honor. Your Honor, with  
5 respect to the first page, the Bureau has two -- in this case  
6 they are more suggestions as opposed to objections. With  
7 respect to the second full paragraph, instead of reading "the  
8 main issue," the Bureau believes a more accurate description  
9 would be "the first issue," so substituting the word "first"  
10 for "main"; and then -- one, two, three -- four lines from the  
11 bottom of that paragraph, again in the nature of making  
12 something more accurate, the word should be "issues" plural as  
13 opposed to "issue."

14 JUDGE LUTON: That all right with you, Mr. Meyers?

15 MR. MEYERS: That's -- of course, that's all right.

16 JUDGE LUTON: All right, proceed.

17 MR. SHOOK: Your Honor, with respect to the second  
18 page, the Bureau objects in its entirety to the first full  
19 paragraph on the grounds that the material here is not  
20 evidence but is properly in the nature of conclusions which  
21 Mr. Meyers, on behalf of Benchmark, may be free to draw in his  
22 Proposed Findings of Fact and Conclusions of Law, but it's not  
23 appropriate for evidence. The Bureau also has a similar  
24 objection to the first full sentence of the next paragraph.  
25 The Bureau has no objection to the remainder of the paragraph,

1 editing it to begin with the word "Benchmark," which appears  
2 in the third line of that paragraph.

3 JUDGE LUTON: Third line or the fourth line?

4 MR. SHOOK: Excuse me, the fourth line, sir.

5 JUDGE LUTON: With respect to the first objection, I  
6 don't think it can create any kind of confusion at all for  
7 Benchmark to conclusively state that it's never made  
8 misrepresentations because the speaker expresses the correct  
9 understanding in the very next sentence that it isn't simply  
10 enough for our purposes to merely make that assertion, and the  
11 promises made that evidence is going to be submitted in  
12 support of the conclusion. I think that is really quite  
13 harmless. It isn't, perhaps, the way that, that we lawyers  
14 would do it, but I don't believe that it's objectionable to  
15 such an extent that it ought to be stricken.

16 MR. SHOOK: Thank you, Your Honor.

17 JUDGE LUTON: All right, now, we've got the second  
18 one on that page.

19 MR. SHOOK: Your Honor, with respect to pages 3  
20 through the second paragraph of page 10, the Bureau believes  
21 that most of this material, which is, I believe, conceded to  
22 be background, is generally unnecessary and it would help  
23 matters immensely if this were condensed, and the Bureau  
24 suggests that in terms of a condensation that the second  
25 paragraph of the Hearing Designation Order in this proceeding

1 simply be substituted, and that official notice be taken of  
2 the various documents that are referenced in the Hearing  
3 Designation Order, second paragraph. That would, I believe,  
4 shorten matters and make it much easier to follow what is  
5 going on here rather than referring to materials which have  
6 absolutely nothing to do with the issues to be tried.

7 JUDGE LUTON: Mr. Meyers, would you like to address  
8 that? You don't have to.

9 MR. MEYERS: Our reason for going through all of  
10 this was to try to paint a picture of the difficulties which  
11 WCCJ had found itself in with regard to playing the clown for  
12 other broadcasters at that time under 80/90's rule changes who  
13 were trying to make all these upgrades and so forth. We  
14 simply were being the ball in a tennis match, and I was trying  
15 to demonstrate that in these various breakdowns in histories  
16 here.

17 JUDGE LUTON: But in doing that you really sweep in  
18 a lot of matters about which there is no controversy between  
19 Benchmark and the Commission, it seems to me, and also a lot  
20 of matters that are really quite irrelevant to the particular  
21 issues that we're interested in learning about today.

22 MR. MEYERS: But it was strictly presented as  
23 history.

24 JUDGE LUTON: Preventative history? What, what's --

25 MR. MEYERS: Presented.

1 JUDGE LUTON: Oh, presented as history.

2 MR. MEYERS: Yes, sir.

3 JUDGE LUTON: Well, a presentation of history is  
4 fine so long as it moves in some way towards a resolution of  
5 the issues that are to be tried, but history for history's  
6 sake stands out there irrelevantly, and because it may be  
7 irrelevant, we're going to consider that in a minute, I'm  
8 going to reject this history for history's sake. Mr. Shook,  
9 your idea was to substitute some portion of the Designation  
10 Order for the language that appears in Benchmark's exhibit on  
11 pages 3 through 10.

12 MR. SHOOK: Yes, sir. What I had in mind --

13 JUDGE LUTON: If the material is irrelevant as is  
14 presently stated, would not it continue to be irrelevant as  
15 it's stated in the Designation Order since the Designation  
16 Order, it seems to me, disposed of a lot of the, the history,  
17 the, the -- it considered all of that history, and to have  
18 that history come back in here will accomplish nothing, it  
19 seems to me, even though it's -- to accept the Bureau's view,  
20 it would be the history as stated by the Commission? So what,  
21 would be my question.

22 MR. SHOOK: Your Honor, this is --

23 JUDGE LUTON: Do we need it in either event?

24 MR. SHOOK: Your Honor, it is simply background  
25 information and to that extent background information is

1 sometimes deemed useful but is generally simply informative as  
2 opposed to being absolutely necessary, so.

3 JUDGE LUTON: Well, as a matter of evidence, if  
4 the -- if material that is offered moves me no way toward  
5 arriving at a decision in the case on the issues that are  
6 designated, that background material is really quite  
7 irrelevant. Does the Bureau believe that the portion of the  
8 Designation Order that it would substitute for the language on  
9 pages 3 through 10 say the same thing?

10 MR. SHOOK: Your Honor --

11 JUDGE LUTON: The, the language in the Designation  
12 Order, when compared with the language in the exhibit on  
13 pages 3 through 10, is the same in the Bureau's view, but that  
14 it's stated in a manner that the Bureau would prefer? In the  
15 Designation Order.

16 MR. SHOOK: Yes, sir, it's a very condensed version  
17 of what appears on pages 3 through 10.

18 JUDGE LUTON: So then the Bureau's objection is --  
19 I'm not sure now whether it's irrelevancy or whether there's a  
20 better statement of the material --

21 MR. SHOOK: Well --

22 JUDGE LUTON: -- someplace else.

23 MR. SHOOK: Let me, let me try again with this,  
24 Your Honor. If you would refer specifically to the various  
25 attachments that are referenced on pages 3 through 10 that,

1 that might provide us with a better basis for dialogue here.  
2 In that respect, Your Honor, the Bureau has no objection to  
3 referencing Attachments 1 and 2. The Bureau does object to  
4 the relevancy of Attachments 3 through 10. The Bureau has no  
5 objection to Attachments 11 through 14.

6 JUDGE LUTON: Well, the Bureau is going to have to  
7 say why it objects to some and not to others, otherwise I'm  
8 not going to understand the Bureau's position at all.

9 MR. SHOOK: Your Honor, with respect to Exhibit 1,  
10 Exhibit 1 is simply the basic -- is the application that was  
11 filed on behalf of Benchmark in 1985, the application which  
12 led to its obtaining the construction permit for WCCJ.

13 JUDGE LUTON: And the Bureau does not object to  
14 that.

15 MR. SHOOK: No, sir, it does not.

16 JUDGE LUTON: Okay.

17 MR. SHOOK: And I believe as we go through this  
18 there is at least one reference in an exhibit attached to that  
19 application which Benchmark makes reference to later on  
20 because the exhibit in question talks about providing a  
21 back-up power system in the event the initial transmitter is  
22 not working, and that is, that is something that is  
23 specifically made reference to later on, so that's another  
24 reason why the Bureau has no objection to Attachment No. 1.

25 MR. MEYERS: May I make a correction that what

1 | you're referring to is auxiliary power in case of power  
2 | service failures and not a back-up transmitter?

3 |           MR. SHOOK: The Bureau also has no objection to  
4 | Attachment 2, which is simply the document that shows the  
5 | Commission grant of the application to Benchmark. It gives us  
6 | an initial time line for when Benchmark was a position to take  
7 | control of the permit and either begin or not begin  
8 | construction.

9 |           JUDGE LUTON: Mr. Shook, I view attachments as not  
10 | being offerings separate and apart from the main testimony.  
11 | They supplement the main testimony, they provide some further  
12 | specifications and some further detail for the testimony; but  
13 | you're proceeding to treat the attachments as though they were  
14 | independent evidentiary offerings quite unrelated to the  
15 | testimony. I don't know how to deal with them that way.

16 |           MR. SHOOK: Your Honor, in that sense, if I may, the  
17 | first paragraph of page 3 does make specific reference to  
18 | Attachments 1 and 2, and with Your Honor's admonition in mind,  
19 | I -- the Bureau would have no objection to the first paragraph  
20 | on page 3.

21 |           JUDGE LUTON: Oh, there is just -- I, I'd really be  
22 | interested in the things that the Bureau objects to.

23 |           MR. SHOOK: Well, Your Honor, I could go through  
24 | each of the attachments and the referencing paragraphs in the  
25 | testimony submitted.

1 JUDGE LUTON: Well, that, that, that's the way I  
2 think the testimony is intended to be read, is it not?

3 MR. MEYERS: Yes, sir.

4 MR. SHOOK: Your Honor, in that sense, the Bureau  
5 would object to the second paragraph in its entirety that  
6 appears on page 3.

7 JUDGE LUTON: All right, let's consider that one.  
8 And the basis for the objection?

9 MR. SHOOK: The Bureau believes it is irrelevant.

10 JUDGE LUTON: All right, and this carries with it  
11 Attachment No. 3.

12 MR. SHOOK: Yes, sir.

13 JUDGE LUTON: The claim is made this is irrelevant.  
14 Do you wish to address it, Mr. Meyers?

15 MR. MEYERS: Well, the relevance here is the fact  
16 that again it, it builds history for the reason why we were  
17 delayed in construction, being uncertain as to what facility  
18 we were going to build and when.

19 JUDGE LUTON: I'm going to overrule the objection  
20 and permit the second paragraph to stand. Next objection.

21 MR. SHOOK: Your Honor, the Bureau objects to the  
22 following paragraph, which references Attachments 4, 5, 6, 7,  
23 and 8, on the grounds of -- on the grounds that they are  
24 irrelevant.

25 JUDGE LUTON: All right. Mr. Meyers, I suppose this

1 is some more history. This is related to the same point?

2 MR. MEYERS: The relevance here is it refers to the  
3 individuals who, because their station was on the air and has  
4 more standing in the eyes of the Commission for rule making,  
5 these are the people who were influencing our direction beyond  
6 our control.

7 JUDGE LUTON: This is irrelevant. I'm going to  
8 grant that objection and strike that second paragraph and  
9 related attachments. We're on page 4 now, next objection.

10 MR. SHOOK: Your Honor, the Bureau objects to the  
11 only complete paragraph that appears on page 4, and with it  
12 Attachments 9 and 10 on the grounds that they are irrelevant.

13 JUDGE LUTON: All right, this one, Mr. Meyers, I  
14 understand it tells us that Benchmark's attorney at the time,  
15 John King, addressed a concern made by Fuss, which concerned  
16 something or other. What's the relevance of that? And by  
17 "relevance" I don't mean relevance in the sense that it may  
18 concern matters important to Benchmark; I mean relevant to the  
19 issues that we are going to try here today. Let me just say  
20 what these are so that we don't get too focused on this  
21 history: "to determine whether Benchmark made  
22 misrepresentation to the Commission, was lacking in candor in  
23 its dealing with the Commission, or attempted to deceive or  
24 mislead the Commission." That is specifically with respect to  
25 the apparent misrepresentations that the Chief, Audio Services

1 Division, thought that it saw concerning the movement of an  
2 entire mobile home to the site and the installation of a  
3 service line to the site. That's the -- what's that letter?  
4 Well, it's stated on page 1 of the Hearing Designation Order.  
5 The matters that we're concerned with has to be relevant to  
6 that which makes -- which goes into the first issue, and the  
7 second issue, which has to do with the Highlands --

8 MR. MEYERS: Yes, sir.

9 JUDGE LUTON: -- Broadcasting matter.

10 MR. MEYERS: The, the relevance --

11 JUDGE LUTON: What I'm looking for is material that  
12 is relevant to those two issues, not matters that Benchmark  
13 may remember with tremendous clarity because it, it was  
14 important to Benchmark, or it may still be important to  
15 Benchmark. The only thing we're going to deal with here today  
16 are those two issues specified in the Designation Order.

17 MR. MEYERS: Yes, sir. I, I believe the relevance  
18 here, sir, is it, it -- the issues at hand represent the end  
19 of a long stream of events and the reason why I offered this  
20 information was to try to present the reasons why Benchmark  
21 found itself in a very compromising position that created the  
22 appearance of these events.

23 JUDGE LUTON: Well, I can grant you some leeway in,  
24 in doing that but still I'm going to have to -- you're going  
25 to have to make a showing of the relevancy with respect to the

1 Bureau's objections, certainly. It isn't enough to say that  
2 Benchmark is interested in presenting the full picture.  
3 You're going to have to respond with more specificity than  
4 that when the Bureau claims, for example, that the only full  
5 paragraph on page 4 is irrelevant. What's your precise  
6 response to that? It isn't enough to say that "I'm presenting  
7 this because I want the full picture to be shown." Please  
8 answer the objection.

9 MR. MEYERS: Let me read, please, for a second.

10 (Pause.)

11 MR. MEYERS: The relevance here is that we were not  
12 aware of the changes taking place that affected us at the time  
13 that we acquired the construction permit, and I believe, if I  
14 understand my, my own writing correctly, we were trying to  
15 then find out what arrangement had been made between the  
16 previous CP holder and ourselves. And, and what effect this  
17 was going to have in the construction of the station and when.

18 JUDGE LUTON: Everything that Benchmark might have  
19 gone through just cannot be, be relevant to the issues that  
20 we're trying here today.

21 MR. MEYERS: I understand what you're saying.

22 JUDGE LUTON: To me, this paragraph doesn't go any  
23 way toward resolving anything. It gives me some irrelevant  
24 detail really about a July 31 letter addressed by John King,  
25 apparently to Fuss concerning a certain conflict of some kind.

1 We'll never get the issues tried if we go off into that kind  
2 of thing. I'm going to sustain the objection and strike the  
3 full paragraph appearing on page 4. Next objection.

4 MR. SHOOK: Your Honor, the Bureau objects to the  
5 next paragraph which begins on the bottom of page 4 and  
6 carries over to the top of page 5 on the grounds that that  
7 paragraph and the attachment, referenced Attachment 11, is  
8 irrelevant.

9 JUDGE LUTON: Incidentally, consistent with my view  
10 of this evidentiary offering, when I strike a paragraph that  
11 carries some references to, or a single reference to, one or  
12 more of the attachments, the attachments fall along with the  
13 testimony. The paragraph beginning at the bottom of page 4,  
14 it seems to me that's irrelevant and I'm, I'm sustaining the  
15 objection and striking the paragraph.

16 MR. SHOOK: Your Honor, the Bureau objects to the  
17 next paragraph which begins, "On August 13, 1985," and  
18 concludes with a reference to Attachment 12 on the grounds  
19 that it is irrelevant.

20 JUDGE LUTON: Well, these are all matters that --  
21 about which there seems to be no dispute. There just isn't  
22 any disagreement between Benchmark and the Commission about  
23 all of these things, and yet Benchmark feels the need to put  
24 all of this, this stuff in. This is the very thing that I did  
25 have trouble with prior to coming in here today. It's really

1 not apparent to me how a minute recitation of all of this  
2 history is going to help Benchmark with respect to the issues  
3 that I'm going to decide in this case, namely whether there's  
4 a misrepresentation with respect to the power, and the mobile  
5 studio, and the other thing. I just don't see how -- I don't  
6 see what this has to do with those issues.

7 MR. MEYERS: Okay.

8 JUDGE LUTON: At the same time, I don't want to  
9 prevent Benchmark from putting on its case, nor do I want to  
10 sit here all day and pick through irrelevant matters.

11 MR. MEYERS: At, at the risk of sounding like  
12 somebody off of the television courtroom scene, the only way I  
13 can demonstrate, perhaps, the relevance of these is when we  
14 get into the thick of the actual matter. It is all, true, it  
15 is all background and it appears to be purely history and, and  
16 perhaps --

17 JUDGE LUTON: About which there's no dispute.

18 MR. MEYERS: That's true. That's quite true.

19 JUDGE LUTON: And my charge is to sit here and try  
20 to decide disputed matters. It's a tough matter. I want to  
21 be fair to Benchmark. I want to give it an opportunity to  
22 present its case as it feels a need to present that case, but  
23 at the same time I don't want to waste time, everybody's time,  
24 here. "On August 13, Benchmark requested a call sign -- the  
25 call for WDAL to be changed to WCCJ, which the Commission

1 granted on August 15." Suppose, Mr. Meyers, that that  
2 language is not in this testimony. Do you think that  
3 Benchmark would be able to rely on what I understand to be the  
4 fact that on August 13 Benchmark requested the call for WDAL  
5 to be changed to WCCJ, and that the Commission granted that  
6 request on August 15, 1985? I mean, it's a fact, isn't it,  
7 administrative fact?

8 MR. MEYERS: If I understand the correct -- the  
9 question correctly, it is historical but perhaps not, as you  
10 say, relative to the specific issue.

11 JUDGE LUTON: Yeah.

12 MR. MEYERS: I understand.

13 JUDGE LUTON: Yeah. And to the extent that  
14 Benchmark nevertheless felt the need in making its case to  
15 bring to my attention the claim that on August 13 such and  
16 such a thing happened, it might be able to do it whether it's  
17 stated in this thing or not. I'm talking too much. I think  
18 I'm going to get everybody all confused here, not -- at least  
19 not thinking the way that I'm thinking. I'm going to have to  
20 strike that, that paragraph, which heads off, "On August 13,  
21 1985." Mr. Shook, please proceed.

22 MR. SHOOK: Your Honor, the Bureau has the same  
23 objection to the next paragraph and Attachments 13 --

24 JUDGE LUTON: Okay.

25 MR. SHOOK: -- and 14.

1 JUDGE LUTON: What, what are the other paragraphs  
2 throughout the testimony to which the same Bureau objection  
3 applies?

4 MR. SHOOK: Your Honor, the Bureau has the same  
5 objection until we reach page 10, the third full paragraph,  
6 which begins, "On October 15, 1987." That paragraph, at least  
7 the beginning of that paragraph and the attachment that is  
8 referenced there, the Bureau has no objection to it.

9 JUDGE LUTON: I'm only interested in the ones the  
10 Bureau objects to. Now, the Bureau is telling me that  
11 starting at page 5, which is as far as we've gotten, and the  
12 paragraph beginning, "On September 5, 1985," all the way to  
13 the paragraph on page 10 beginning, "On October 15," the same  
14 objection allies [sic], namely that the material offered by  
15 those paragraphs is irrelevant to any issue to be tried, is  
16 that correct?

17 MR. SHOOK: Yes, sir.

18 JUDGE LUTON: All right. Mr. Meyers, anything  
19 different, new, to say about those paragraphs by way of  
20 defending them against the claim of irrelevancy?

21 MR. MEYERS: One, one of those paragraphs, and I'm  
22 trying to identify it at the moment, refers to a letter that  
23 John King had sent me, and after discussion with Mark Lipp  
24 concerning the fact that they were holding our renewal of that  
25 Request for Modification of CP and Abeyance.

1 JUDGE LUTON: Who? That the Commission was holding  
2 it in abeyance?

3 MR. MEYERS: That the Commission was holding it in  
4 abeyance until such time as these other issues that affected  
5 us were resolved.

6 JUDGE LUTON: Um-hum.

7 MR. MEYERS: And that, that is essentially what is  
8 running in through this portion of the testimony. In other  
9 words, the Commission agreed that we couldn't build a facility  
10 based on the information we had. In fact, someplace in our  
11 discussion, I related this to Mr. Shook even during our  
12 deposition. There was a 45-day period for which we had no  
13 frequency assignment at all. We had a CP but we couldn't --  
14 we didn't have a frequency assignment.

15 JUDGE LUTON: All right, okay.

16 MR. MEYERS: And, and this material related through  
17 here is all relevant to that, that portion of the delay that  
18 the Commission agreed with.

19 JUDGE LUTON: Are you looking for something in this  
20 material about a John King letter? Where is that? Have you  
21 found it?

22 MR. MEYERS: I believe it's on page 8, the last  
23 paragraph, and it's the fifth line, fourth and fifth line,  
24 "Commission staff suggested to me today that the application  
25 be held in abeyance pending the outcome of the rule making."

1 JUDGE LUTON: And, again, the point is to  
2 demonstrate what?

3 MR. MEYERS: To, to, to demonstrate that Benchmark  
4 could not build a station under these circumstances due to  
5 Commission action.

6 JUDGE LUTON: All right. Whether true or not, it  
7 seems to me that's a legitimate enough claim to be irrelevant  
8 [sic] given the case that Benchmark hopes to make. I'm going  
9 to retain that paragraph, overrule the objection with respect  
10 to that paragraph anyhow. What I'm talking about is the one,  
11 the full paragraph beginning on the bottom of page 8, the last  
12 full paragraph, beginning on that page and ending two lines  
13 into page 9. Is there anything else in those pages,  
14 Mr. Meyers, that you think, after having seen my difficulty  
15 with digesting all of this material --

16 MR. MEYERS: I apologize for the --

17 JUDGE LUTON: That, that's okay.

18 MR. MEYERS: -- voluminous nature of this.

19 JUDGE LUTON: -- that, that you want here, that,  
20 that you think is, is relevant, is as relevant as is what  
21 appears to be the central claim having to do with King's  
22 letter to Mr. Meyers'? Nothing else in that paragraph is as  
23 important as that, is it?

24 MR. MEYERS: I would agree with you, yes, sir.

25 JUDGE LUTON: All right, then I'm going to grant the

1 objection to strike all of the paragraphs that we've talked  
2 about, starting with the one beginning, "On September 5,  
3 1985," on page 5 all the way through onto page 10, the  
4 paragraph beginning, "On October 6." That's stricken through  
5 with the exception of, on page 8, the paragraph which begins,  
6 "On May 1, 1986, John King addressed a letter to," and  
7 carrying on to the second line on page 9. That is retained;  
8 the rest of that material is stricken as irrelevant. That  
9 brings us, Mr. Shook, up to paragraph, page 10, beginning, "On  
10 October 15, 1987."

11 MR. SHOOK: Yes, sir. The Bureau has -- all right,  
12 you would like me to go to my next objection?

13 JUDGE LUTON: Yes, I would.

14 MR. MEYERS: Excuse me, sir, did you -- on the last  
15 paragraph on page 10, did I hear you say you did not strike  
16 that?

17 JUDGE LUTON: I struck through the paragraph  
18 beginning, "On October 6, 1987."

19 MR. MEYERS: Oh, okay.

20 JUDGE LUTON: That's as far as we've gotten. We are  
21 now starting at the paragraph which begins, "On October 15,  
22 1987." That's on page 10. It's the third full paragraph on  
23 page 10. That's where we are now.

24 MR. MEYERS: Yes, sir.

25 MR. SHOOK: Your Honor, the Bureau's next objection

1 is not until page 15. The Bureau has a hearsay objection to  
2 the last sentence of the paragraph that begins on the bottom  
3 of page 14 and carries over to the top of page 15. So the  
4 sentence that the Bureau finds objectionable on the grounds of  
5 hearsay appears beginning on the second line of page 15 to the  
6 conclusion of that paragraph.

7 JUDGE LUTON: The second line of page -- you mean  
8 the last full paragraph beginning on -- the last two lines --

9 MR. SHOOK: Sir, the paragraph --

10 JUDGE LUTON: -- of 15?

11 MR. SHOOK: The paragraph itself begins on page 14.

12 JUDGE LUTON: Oh, I see.

13 MR. SHOOK: The portion of the paragraph that the  
14 Bureau finds objectionable appears on page 15 beginning on the  
15 second line, and it's simply that last sentence of the  
16 paragraph.

17 JUDGE LUTON: I see, the one that states, "Meyers  
18 recalls that Wilson said"?

19 MR. SHOOK: Yes, sir.

20 JUDGE LUTON: Um-hum.

21 MR. SHOOK: It's my understanding from the context  
22 of this paragraph that Benchmark intends to offer that for the  
23 truth of the matter asserted by Mr. Wilson. It's my  
24 understanding that Mr. Wilson is alive and well, and for --

25 JUDGE LUTON: And absent.